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Attorneys for Defendant **BATH & BODY WORKS**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

TRACY MORRISON,

Plaintiff,

vs.

BATH & BODY WORKS, and DOES 1 to 100,  
inclusive

Defendants.

**Case No.: CV 10-1276 ODW (EX)**

**[Assigned to: Hon. Otis D. Wright II, United  
States District Judge]**

**RESPONSE TO THE COURT'S ORDER  
TO SHOW CAUSE RE; FAILURE TO  
FILED JOINT RULE 26(f) REPORT**

**[FILED CONCURRENTLY WITH THE  
JOINT SCHEDULING CONFERENCE  
REPORT PURSUANT TO FEDERAL  
RULES OF CIVIL PROCEDURE RULE  
26(f)]**

Date: May 17, 2010

Time: 1:30 p.m.

Complaint Filed in State Court: January 12,  
2010

The undersigned, counsel for plaintiff Tracy Morrison and counsel for defendant Bath & Body Works hereby submit the following declaration in response to the Order to Show Cause regarding why the case should not be dismissed and why sanctions should not be imposed for failure to timely file the Joint Rule 26(f) Report. Submitted concurrently herewith is the Joint Scheduling Conference Report submitted in compliance with the Federal Rules of Civil Procedure Rule 26(f).

JOINT DECLARATION OF GAYLE D. PERLO

I Gayle D. Perlo, declare and state as follows:

1. I am an attorney licensed to practice law in and by the State of California, and I am Senior Counsel with the firm of Manning & Marder, Kass, Ellrod, Ramirez LLP, attorneys of record for defendant Bath & Body Works. The following is based on my personal knowledge and if called as a witness I could and would competently testify thereto.

2. I was assigned to this case in March 2010. On March 8, 2010 I telephoned plaintiff's counsel to meet and confer to prepare the Joint Scheduling Conference Report. I spoke to attorney Azuka Amucha. During the conversation he indicated that he had not received the Court's order. I advised him that the conference was set for April 26, 2010. Following our telephone conversation I forwarded Mr. Amucha a copy of the order issued by the Hon. Otis D. Wright II concerning the scheduling meeting of counsel. I also advised Mr. Amucha that in compliance with the Federal Rules of Civil Procedure Rule 26(f), we needed to schedule a time prior to April 5, 2010 to discuss the matters to be addressed in the joint report. Attached thereto as Exhibit "A" is a true and correct copy of my correspondence to Mr. Amucha.

3. On April 1, 2010 I again telephoned plaintiff's counsel to meet and confer to prepare the Joint Scheduling Conference Report. I advised counsel that the report had to be filed by April 9, 2010. We agreed to meet by telephone on Monday, April 5, 2010 at 3:00 p.m. to discuss and complete the report. On that date I forwarded plaintiff's counsel a proposed outline of the statement. Attached hereto as Exhibit "B" is a true and correct copy of my correspondence to plaintiff's attorneys, Azuka Amucha and Anahita Sedaghatfar.

4. On April 5, 2010 plaintiff's attorneys and I conducted our final telephone conference to meet and confer in preparation for drafting the Joint Scheduling Conference Report.

1           5.     On April 9, 2010 we had a second teleconference to prepare for  
2 finalizing the Joint Scheduling Conference Report. At that time we also discussed  
3 the Court's standing orders. Ms. Sedaghatfar indicated that she did not have  
4 immediate access to PACER and I offered to and did immediately fax her copies of  
5 the Court's standing order regarding newly assigned cases. Ms. Sedaghatfar was  
6 going to complete the report, and I provided her with my private cell phone number  
7 in the event she needed additional information over the weekend.

8           6.     After receiving the Court's order setting the OSC, plaintiff's counsel  
9 and I were in immediate contact.

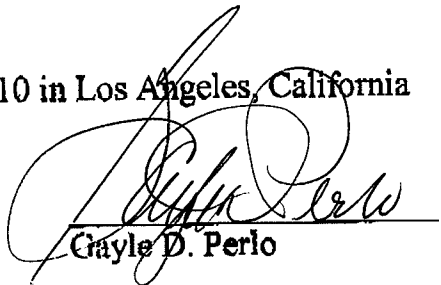
10           7.     My dealings with Mr. Amucha and Ms. Sedaghatfar have been both  
11 professional and courteous, and it appears from our conversations that they do not  
12 generally litigate cases in Federal Court. To this end, we are working together to  
13 insure compliance with the Federal Rules.

14           8.     Submitted concurrently herewith is the Joint Scheduling Conference  
15 Report for the Court's consideration, and plaintiff's counsel and I jointly request that  
16 the case be permitted to proceed, and that the Court waive imposition of monetary  
17 sanctions for our failure to timely submit the report

18           I declare under penalty of perjury under the laws of the United States that the  
19 foregoing is true and correct.

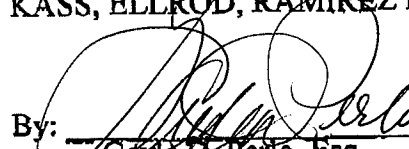
20           Executed this 4th day of May, 2010 in Los Angeles, California

21  
22           Dated: May 4, 2010

  
Gayle D. Perlo

23  
24           MANNING & MARDER  
25           KASS, ELLKOD, RAMIREZ LLP

AMUCHA & ASSOCIATES

26  
27           By:   
28           Gayle D. Perlo, Esq.  
Attorneys for Defendant  
**BATH & BODY WORKS**


By:   
Azuka Amucha  
Attorneys for Plaintiff  
**TRACY MORRISON**

EXHIBIT “A”

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March 18, 2010

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OF COUNSEL  
DONALD S. SMITH \*

\* Admitted in Multiple Jurisdictions  
† Admitted to Practice Law in Arizona only

### VIA FACSIMILE

Azuka Amucha, Esq.  
AMUCHA & ASSOCIATES  
1800 Century Park East, Suite 600  
Los Angeles, CA 90067

Re: **Tracy Morrison v. Bath & Body Works**  
Our File No.: 2072-32874  
Date of Loss: 11/14/08

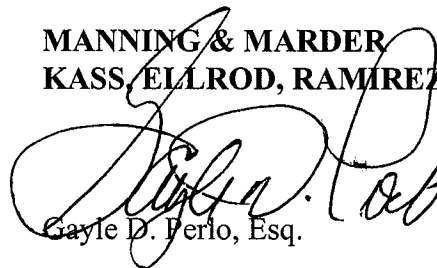
Dear Mr. Amucha:

This is to confirm our telephone conversation today during which we discussed the upcoming Scheduling Conference. Forwarded herewith is a copy of the order issued by the Honorable Otis D. Wright II concerning the scheduling meeting of counsel and scheduling conference set for April 26, 2010 at 1:30 p.m.

In compliance with Federal Rules of Civil Procedure Rule 26(f), we need to schedule a time prior to April 5, 2010 to discuss the matters that must be addressed in the joint report.

Very truly yours,

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP



Gayle D. Perlo, Esq.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TRACY MORRISON,

Plaintiff(s),

v.

BATH & BODY WORKS, et al.,

Defendant(s).

Case No. CV 10-1276 ODW(Ex)

SCHEDULING MEETING OF  
COUNSEL  
[FRCP 16, 26(f)]

SCHEDULING CONFERENCE  
set for April 26, 2010 at 1:30 p.m.  
[FRCP 26(f)]

This case has been assigned to the calendar of United States District Judge Otis D. Wright II. The responsibility for the progress of litigation in the federal courts falls not only upon the attorneys in the action, but upon the court as well.

In order "to secure the just, speedy, and inexpensive determination of every action," (Fed. R. Civ. P. 1), all counsel are hereby ordered to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of the Central District of California.

Counsel please note the changes made to former Local Rule 6, now superseded by Fed. R. Civ. P. 16 and 26(f), effective December 1, 2000. A

1 Scheduling Conference is set for the date and time set forth in the caption.<sup>1</sup>  
2 Counsel shall meet at least twenty-one (21) days in advance of the Scheduling  
3 Conference to prepare a jointly signed report for the court to be submitted no less  
4 than fourteen (14) days before the Scheduling Conference. The report is to contain  
5 the items set forth below. Pursuant to Fed. R. Civ. P. 16(c), the parties shall be  
6 represented by counsel with authority to enter into stipulations regarding all  
7 matters pertaining to conduct of the case.

8 The joint report to be submitted shall contain the items listed in Fed. R. Civ.  
9 P. 26(f), the parties' recommendations and agreements, if any, about the final  
10 scheduling order as listed in Fed. R. Civ. P. 16(b)(1) through (6), and those items  
11 listed in Fed. R. Civ. P. 16(c) which counsel believe will be useful to discuss at the  
12 Scheduling Conference. Items which must be listed are the following:

- 13 (1) a listing and proposed schedule of written  
14 discovery, depositions, and a proposed  
discovery cut-off date;
- 15 (2) a listing and proposed schedule of law and  
16 motion matters, and a proposed dispositive  
motion cut-off date;
- 17 (3) a statement of what efforts have been made  
18 to settle or resolve the case to date and what  
19 settlement procedure is recommended  
20 pursuant to Local Rule 16-15.4 (specifically  
excluding any statement of the terms  
discussed);
- 21 (4) an estimated length of trial and a proposed  
22 date for the Final Pretrial Conference and  
for Trial;
- 23 (5) a discussion of other parties likely to be

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24 <sup>1</sup> Unless there is a likelihood that upon motion by a party the Court would order that any  
25 or all discovery is premature, it is advisable for counsel to begin to conduct discovery actively  
26 before the Scheduling Conference required by Fed. R. Civ. P. 16(b). At the very least, the  
27 parties shall comply fully with the letter and spirit of Fed. R. Civ. P. 26(a) and thereby obtain  
and produce most of what would be produced in the early stage of discovery, because at the  
Scheduling Conference the Court will impose tight deadlines to complete discovery.

added;

- (6) whether trial will be by jury or to the court;
- (7) any other issues affecting the status or management of the case; and
- (8) proposals regarding severance, bifurcation or other ordering of proof.

In addition, the Scheduling Conference Report shall contain the following:

- (1) a short synopsis of the principal issues in the case;
- (2) a statement of whether pleadings are likely to be amended;
- (3) a statement as to issues which any party believes may be determined by motion.<sup>2</sup>

At the Scheduling Conference, the court will set a date for discovery cutoff,<sup>3</sup> a final date by which dispositive motions must be set for hearing, a Final Pretrial Conference date, and a trial date.

A continuance of the Scheduling Conference will be granted only for good cause. (Counsel are informed that continuance of the Scheduling Conference causes commensurate delay in the trial date.) **The failure to submit a joint report**

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<sup>2</sup> Where the Plaintiff's claim is predicated in whole or in part on denial of benefits under a plan regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1000 *et seq.* (ERISA), the parties shall address the following additional issues in their Joint Report:

(1) Standard of Review: What standard of review is applicable? If the parties are in disagreement, they shall propose a schedule for early briefing and decision of this issue on Motion; and (2) Pre-emption: Is there any contention that any state-law claim asserted by Plaintiff is pre-empted by ERISA? If so, the parties shall propose a schedule for early briefing and decision of the issue on Motion.

<sup>3</sup> This is not the date by which discovery requests must be served; but the date by which all discovery is to be completed. Any motion challenging the adequacy of discovery responses must be filed timely, served and calendared sufficiently in advance of the discovery cutoff date to permit the responses to be obtained before that date, if the motion is granted. The Court requires compliance with Local Rule 37-1 and 37-2 in the preparation and filing of discovery motions. Except in the case of an extreme emergency which was not created by the lawyer bringing the motion, discovery motions may not be heard on an ex parte basis.



1 in advance of the Scheduling Conference or the failure to attend the  
2 Scheduling Conference may result in the dismissal of the action, striking the  
3 answer and entering a default, and/or the imposition of sanctions.

4 A settlement procedure appropriate to the particular case will be used in  
5 every civil action pursuant to Local Rule 16-15.1. In the Scheduling Conference  
6 Report, counsel are to recommend a specific settlement procedure provided for in  
7 Local Rule 16-15 which will be utilized in this case. Available alternatives for  
8 consideration, not to the exclusion of others, include:

- 9 (1) a settlement conference before the  
10 magistrate or district judge assigned to this  
case (Local Rule 16-15.4(1));
- 11 (2) appearance before an attorney selected from  
12 the Attorney Settlement Officer Panel (Local  
Rule 16-15.4(2));
- 13 (3) appearance before a retired judicial officer  
14 or other private or non-profit dispute  
15 resolution body for non-judicial settlement  
or mediation proceedings (Local Rule 16-  
15.4(3));
- 16 (4) such other settlement mechanism proposed  
17 by the parties and approved by the court.

18 The report to the court as to the above items should be preceded by a  
19 thorough and frank discussion among the attorneys for the parties. A Joint  
20 Scheduling Report which does not comply with FRCP 16, 26(f) and this Order may  
21 cause continuance of the Scheduling Conference and possible award of sanctions  
22 under FRCP 16(f) against the party or parties responsible. **A conformed courtesy**  
23 **copy** of the Joint Report shall be delivered to the courtesy box on the wall outside  
24 the entrance to chambers on the Spring Street level of the U.S. Courthouse, 312  
25 North Spring Street, **by 3:00 p.m. the following business day.**

26 Motions shall be filed in accordance with Local Rule 7; the next available  
27 motion date can be found on the Court's motion calendar, which can be viewed on  
28

1 the Court's website.<sup>4</sup> This Court hears motions on **Mondays, commencing at**  
2 **1:30 p.m. No supplemental brief shall be filed without prior leave of Court.**  
3 Conformed courtesy copies of **opposition and reply papers** shall be delivered to  
4 the courtesy box on the wall outside the entrance to chambers on the Spring Street  
5 level of the U.S. Courthouse, 312 North Spring Street, **by 4:00 p.m. on the date**  
6 **due.** Adherence to the timing requirements is mandatory for chambers' preparation  
7 of motion matters.

8 Counsel should take note of the changes to the Local Rules affecting motion  
9 practice in the Central District. Among other things, Local Rule 7-3 requires  
10 counsel to engage in a pre-filing conference "to discuss thoroughly . . . the  
11 substance of the contemplated motion and any potential resolution." Counsel  
12 should discuss the issues sufficiently that if a motion is still necessary, the briefing  
13 may be directed to those substantive issues requiring resolution by the Court.  
14 Counsel should resolve minor procedural or other nonsubstantive matters during  
15 the conference.

16 **Memoranda of Points and Authorities in support of or in opposition to**  
17 **motions shall not exceed 25 pages. Replies shall not exceed 12 pages.** Only in  
18 rare instances and for good cause shown will the Court grant an application to  
19 extend these page limitations. **Typeface shall comply with Local Rule 11-3.1.1.**  
20 **NOTE: Times New Roman font must be used and the size must be no less than**  
21 **14.** Footnotes shall be in typeface no less than two sizes smaller than text size and  
22 shall be used sparingly. Filings which do not conform to the Local Rules and this  
23 Order will not be considered.

24 Each party filing or opposing a motion or seeking the determination of any  
25 matter shall serve and lodge a Proposed Order setting forth the relief or action  
26

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27 <sup>4</sup> All law and motion matters, except for motions in limine, must be set for hearing (not  
28 filing) by the motion cutoff date.

1 sought and a brief statement of the rationale for the decision with appropriate  
2 citations.

3 Counsel are reminded ex parte applications are solely for extraordinary  
4 relief. *See Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F.  
5 Supp. 488 (C.D. Cal. 1995).

6 Counsel for plaintiff shall immediately serve this Order on all parties,  
7 including any new parties to the action.

8 IT IS SO ORDERED.

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10 DATED: March 9, 2010

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\_\_\_\_\_  
Otis D. Wright II  
United States District Judge

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\*\*\* TX REPORT \*\*\*  
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## FACSIMILE COVER SHEET

CLIENT/MATTER NO.: 2072-32874  
USER ID: 0634  
DATE: March 18, 2010  
RECIPIENT: Azuka Amucha, Esq.  
AMUCHA & ASSOCIATES  
Tel: 310-801-9064  
FAX NUMBER: 310-229-5738  
FROM: Gayle D. Perlo, Esq.  
RE: *Tracy Morrison v. Bath & Body Works*  
Total pages (including cover): 8

EXHIBIT “B”

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April 1, 2010

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### VIA FACSIMILE

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OF COUNSEL  
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† Admitted to Practice Law in  
Arizona only

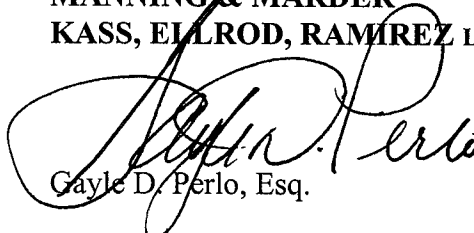
Re: **Tracy Morrison v. Bath & Body Works**  
Our File No.: **2072-32874**  
Date of Loss: **11/14/08**

Dear Mr. Amucha:

This is to confirm our telephone conversation today concerning the Joint Scheduling Conference Report which must be filed with the Court by April 9, 2010. Forwarded herewith is a skeleton outline of the statement.

As we agreed, we will meet by telephone on **Monday April 5, 2010 at 3:00 p.m.** to discuss and complete the report.

Very truly yours,  
**MANNING & MARDER**  
**KASS, ELLROD, RAMIREZ LLP**



Gayle D. Perlo, Esq.

GDP/gdp

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Attorneys for Defendant **BATH & BODY WORKS**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

TRACY MORRISON,	)	<b>Case No.: BC429608</b>
	)	[Judge Luis A. Lavin - Dept. 13]
Plaintiff,	)	
	)	<b>JOINT SCHEDULING CONFERENCE</b>
vs.	)	<b>REPORT PURSUANT TO FEDERAL</b>
	)	<b>RULES OF CIVIL PROCEDURE RULE</b>
BATH & BODY WORKS, and DOES 1 to 100,	)	<b>26(f)</b>
inclusive	)	
	)	
Defendants.	)	
	)	<i>Complaint Filed: 1/12/10</i>

The undersigned, counsel for plaintiff Tracy Morrison and counsel for defendant Bath & Body Works hereby submit this joint report pursuant to Federal Rules of Civil Procedure Rule 26 subdivision (f) .

1. Principal Issues in the Case:
2. Proposed Amendments to Pleadings:
3. Statement of Issues to be resolved by motion:
4. Proposed Discovery Schedule:
  - a. Written Discovery:
  - b. Depositions:
  - c.. Discovery cut-off date:

- 1           5.     Proposed Law and Motion Schedule:
  - 2               a.     Motions:
  - 3               b.     Motion cut-off date:
  - 4
- 5           6.     Settlement Efforts [Local Rule 16-15.4]:
  - 6               a.     Efforts to resolve the case to date:
  - 7               b.     Recommended settlement procedure:
  - 8           7.     Trial:
    - 9               a.     Jury trial
    - 10              b.     Estimate: Three to five days
    - 11              c.     Proposed date for Final Pretrial Conference:
    - 12              d.     Proposed date for Trial:
    - 13           8.     Other parties to be added:
    - 14           9.     Other issues affecting the status of the case:
    - 15           10.    Proposals regarding severance, bifurcation or other ordering of proof:
    - 16

17       Dated: March 17, 2010

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

20                   By: \_\_\_\_\_  
21                             Jeffrey M. Lenkov, Esq.  
22                             Gayle D. Perlo, Esq.  
23                             Attorneys for Defendant  
24                             **BATH & BODY WORKS**  
25  
26  
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### FACSIMILE COVER SHEET

CLIENT/MATTER NO.: 2072-32874

USER ID: 0634

DATE: May 5, 2010

RECIPIENT: Azuka Amucha, Esq.  
AMUCHA & ASSOCIATES  
Tel: 310-801-9064

FAX NUMBER: 310-229-5738

FROM: Gayle D. Perlo, Esq.

RE: *Tracy Morrison v. Bath & Body Works*Total pages (including cover): 21